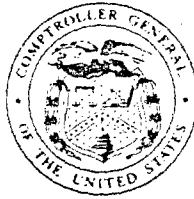


DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

Proc

10,664

FILE: B-194510

DATE: July 5, 1979

MATTER OF: Save-On Wholesale Products *PLC 02044*

[Protest Against Rejection of Bid As Nonresponsive]
DIGEST:

1. Where equal item does not conform to salient characteristics of brand name product, bid must be rejected as nonresponsive.
2. Nonresponsive bid cannot be accepted even if it offers Government monetary savings, because acceptance of such bid would be contrary to integrity of competitive bidding system.
3. One procuring activity's determination of minimum needs is not determinative of propriety of another procuring activity's minimum needs.

The Department of the Navy (Navy) issued invitation for bids (IFB) NOO123-79-B-0520 for the lease and maintenance of seven contractor-owned soft-serve, ice cream dispensers, Yubi Model Y-200-A1, or equal, and the furnishing of ice cream in 5-gallon stainless steel containers for 1 year with 2-year options.

Five bids were solicited. Two bids were received. Save-On Wholesale Products (SOWP) submitted the low bid. Soft Swirl Corporation (Soft Swirl), the incumbent contractor, submitted the other bid and offered the brand name dispenser. The Navy determined that SOWP did not offer a compliant dispenser and, consequently, its bid was rejected as nonresponsive. The contract was awarded to Soft Swirl.

In advising SOWP that its bid had been rejected, the Navy stated as follows:

"Evaluation was made on the basis of your bid and descriptive literature provided thereto.

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"It is determined that the bid fails to meet the specifications of Sections F-1 and F-9.

"F-1 'Storage Space: Necessary space to place under constant refrigeration two (2) five gallon stainless steel tanks (per head) and kept at a temperature of 32 to 43 degrees Fahrenheit.'

"F-9 'The contractor will furnish soft serve liquid mix in five (5) gallon stainless steel tanks filled, charged and sealed under controlled conditions to inhibit growth of bacteria.' The Taylor Model 334 (which SOWP bid) is a gravity fed machine where raw mix must be poured in by the operator. The specification (F-9) requires sealed canister, pressure forced-fed. Additionally, the Taylor Model 334, by virtue of its design, will not permit the use and storage of sealed stainless steel canisters, which are filled and sterilized at the dairy. (F-1)."

In its report to our Office, the Navy also contends that the Taylor dispenser bid by SOWP is not compliant with brand name dimensions set out in salient characteristic F-2 of the IFB.

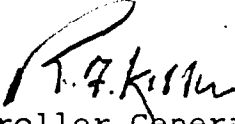
SOWP protested the rejection of its bid to the Navy. The Navy denied the protest.

SOWP subsequently filed a protest with our Office alleging in substance that it should have been awarded the contract because other Navy facilities use the Taylor dispenser Model 334 which it bid, and because SOWP's bid was low. SOWP, however, does not take issue with the Navy's contentions that its dispenser did not meet three salient characteristics of the brand name dispenser.

We have consistently held that where, as here, the equal item bid does not conform to the salient characteristics of the brand name product, the bid must be rejected as non-responsive. See, e.g., General Hydraulics Corporation, B-181537, August 30, 1974, 74-2 CPD 133. The nonresponsive bid cannot be accepted even if it offers the Government monetary savings, because acceptance of such a bid would be contrary to the integrity of the competitive bidding system. Ed-Mor Electric Co., Inc., B-187348, November 17, 1976, 76-2 CPD 431.

The fact that other Navy facilities use the Taylor dispenser is of no consequence. One procuring activity's determination of its minimum needs is not determinative of the propriety of another procuring activity's minimum needs. Maremont Corporation, 55 Comp. Gen. 1362 (1976), 76-2 CPD 181, and cases cited therein.

Based on the foregoing, the protest is denied.


Deputy Comptroller General
of the United States